UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,865	09/22/2003	Hirokazu Nishimura	17044	1153

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/667,865	NISHIMURA ET AL.
	Examiner	Art Unit	
	ATIA SYED	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>22 July 2009</u>.

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-14</u> is/are pending in the application.

   4a) Of the above claim(s) <u>2 and 9</u> is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1, 3-8, 10-14</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date <u>02/12/2009, 07/22/2009</u>.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Applicant's response filed on April 27, 2009 is acknowledged.

Note to Applicant Regarding Claim Interpretation

The word "for" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Additionally, <u>only</u> those claims using "means for" or "step for" modified by some functional language, as long as it is not modified by sufficient structure, material, or acts for achieving the specified function, will invoke 35 U.S.C. 112, *sixth* paragraph. For example, "step of" or "processing means", does <u>not</u> invoke 35 U.S.C. 112, *sixth* paragraph. If the applicant chooses to invoke 35 U.S.C. 112, *sixth* paragraph without using "means for" or "step for", applicant may do so by explicitly stating so in the subsequent response to this office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by

Graham et al. (WO 98/58338, hereinafter Graham).

Regarding **<u>claim 1</u>**, Graham disclose a diagnostic support apparatus comprising:

a plurality of computers connected to each other through a line (fig 2; page 12,
lines 27-29);

a diagnostic support content storage means (fig 2, page 12, lines 27-28; server
with database) for storing a plurality of diagnostic support contents for providing diagnostic
support;

transmission means for transmitting the stored diagnostic support content, and

reception means for receiving the diagnostic support content transmitted from the
transmission means (fig 2; page 12, line 24-page 13, line 12); and

detection means for detecting that diagnostic support content stored in the
diagnostic support content storage means is at least updated or added (the first step of building a
new diagnostic support content is to select whether the physician wants to review and finish a
previous work up, step 517 or start a new workup i.e. the system detects that whether a new
diagnostic content is being added or an old diagnostic content is being updated; page 18, lines 5-
19);

selection means (fig 3a, select practice routine 560; page 15, lines 6-7; physician
can select from a drop down menu) for selecting a desired diagnostic support content from the
plurality of diagnostic support contents stored in the diagnostic support content storage means;

information acquisition means (fig 11A, angiography routine; page 26, line 15-page 28, line 19) for acquiring diagnostic information concerning at lest one of a patient, an examination, and an image from a medical system;

diagnostic support information creating means (evaluation software 340; page 13, lines 25-29; fig 3b, evaluation routine 600, generates diagnostic support information based on the information selected by the physician in the earlier routines) for creating diagnostic support information on the basis of the diagnostic support content selected by the selection means and the diagnostic information acquired from the medical system, the diagnostic support information creating means creates diagnostic support information based on diagnostic information acquired from the medical system and the diagnostic support content received by the reception means (the diagnostic support information is created based on the diagnostic information acquired from the medical system i.e. stress tests, angiograms etc and diagnostic support content received by the reception mean i.e. workups; see *summary of invention* and page 17, lines 5-9; the diagnostic support system acquires information provided by the physician including test results and provides recommendations based on the received information and the data stored in the database 230); and

diagnostic support display means (display 312; page 13, line 4) for displaying the diagnostic support information created by the diagnostic support information creation means.

See previous office action for rejections on claims 3-8 and 10.

Regarding **claim 13**, Graham disclose a diagnostic support method of providing

diagnostic support comprising:

a step of acquiring diagnostic support content (page 13, lines 23-24; the physician

acquires previously stored diagnostic support contents form the database 230 which stores all the

information regarding patients and diagnosis; page 17, lines 6-9);

a step of inputting diagnostic information concerning at least one of a patient as a

diagnostic support target, an examination, and an image (page 13, lines 20-22);

a step of transmitting the diagnostic support content (fig 2; page 12, line 24-page

13, line 12; the diagnostic support content is transmitted from server 220 to any local physician

workstation)

a step of receiving the diagnostic support content transmitted from the

transmission means (fig 2; page 12, line 24-page 13, line 12; the diagnostic support content is

received at the local physician workstation);

detection means for detecting when diagnostic support content in the diagnostic

support content storage means is at least updated or added (the first step of building a new

diagnostic support content is to select whether the physician wants to review and finish a

previous work up, step 517 or start a new workup i.e. the system detects that whether a new

diagnostic content is being added or an old diagnostic content is being updated; page 18, lines 5-

19), and transmitting the diagnostic support content based on a detection result obtained by the

detection means (the diagnostic support content is transmitted/loaded to the physician

workstation based on the detection that which workup (by date) requested by the physician for

review or finish; page 18, lines 5-19);

a step of creating diagnostic support information using the diagnostic support

content and the diagnostic information (evaluation software, physician inputs patient information

along with all the symptoms, risk factors and test results and the evaluation software returns

diagnostic support information; abstract);

a step of displaying the diagnostic support information (page 13, lines 20-22).

See previous office action for rejections on claim 14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 11 and 12 are rejected under 35 U.S.C 103(a) as being unpatentable over

Graham (WO 98/58338) in view of Ema et al. (US 5, 779, 634, hereinafter Ema).

See previous office action for rejections on claims 11-12.

Response to Applicant's Argument

Applicant's arguments regarding claims 1-14, filed on April 27, 2009 are fully considered

but are not persuasive. To further clarify the rejections under 35 U.S.C 102(a), Examiner has

cited additional sections of the previously applied prior art; see rejections above for details.

The Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATIA SYED whose telephone number is (571)270-7134. The examiner can normally be reached on Monday through Friday, 9:00-5:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

would like assistance from a USPTO Customer Service Representative or access to the

automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ATIA SYED/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

August 12, 2009